

HONORABLE DAVID ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ELIAS PEÑA, ISAIAH HUTSON, and
RAY ALANIS,

Plaintiffs,

v.

CLARK COUNTY, WASHINGTON,

Defendant.

NO. 3:21-cv-05411-DGE

**DECLARATION OF ROGER
TOWNSEND IN SUPPORT OF MOTION
TO EXCLUDE NON-DISCLOSED
WITNESS**

Note on Motion Calendar: May 22, 2023

Roger Townsend states:

I am counsel for Plaintiffs. I have personal knowledge of the facts stated herein and am competent to testify to these facts.

1. Attached as **Exhibit 1** is a true and correct copy of an email I sent to Defendant's counsel on May 17, 2023 regarding whether they would stipulate to exclude Cosgrove or otherwise explain why the late edition was justified.

2. As of this filing, Defendant's counsel has not responded.

DATED: May 18, 2023.

BRESKIN JOHNSON & TOWNSEND, PLLC

By: s/ Roger M. Townsend
Roger M. Townsend, WSBA #25525
Daniel F. Johnson, WSBA #27848
1000 Second Avenue, Suite 3670
Seattle, WA 98104
(206) 652-8660
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EXHIBIT 1

From: [Roger Townsend](#)
To: Jayne L. Freeman; [Audrey M. Airut Murphy](#); [Dan Johnson](#); [fnunez@maldef.org](#); [leslie.lopez@clark.wa.gov](#); [llozada@maldef.org](#); [lsaucedo@maldef.org](#)
Cc: [LaHoma Walker](#); [Lindsey Martin](#); [Ann Tarossi](#); [Mariajose Corona](#)
Subject: Re: 3:21-cv-05411-DGE Pena et al v. Clark County - Cosgrove
Date: Wednesday, May 17, 2023 7:06:21 PM
Attachments: [Outlook-kjm0pjvi.png](#)

Jayne:

I am writing to see if you will stipulate to remove Pat Cosgrove from the witness list. You did not disclose Mr. Cosgrove until the Amended Pretrial Order on May 12. Compare Dkt. 95, with Dkt. 78. He was not on your witness disclosure list in this case at any time until May 12.

If a party fails to disclose a witness under the time requirements of Fed. R. Civ. P. 26(a), the party cannot use that witness for evidence at trial “unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37 (c)(1). As his employer and Ray Alanis' crew chief, Clark County has no excuse for the failure and the failure to disclose this witness in a timely and proper manner has prevented Plaintiffs from adequately investigating and or deposing this witness prior to trial, which prejudices Plaintiffs.

Accordingly, we respectfully request you exclude Pat Cosgrove from testifying at trial without a showing of substantial justification.

Thank you,
Roger

Roger M. Townsend
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Seattle, Washington 98104
Direct | 206-518-6200
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Main | 206-652-8660

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